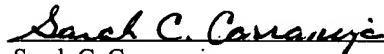




PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 1, 2007.


Sarah C. Carranceja

Applicant : Dah-Ben Liang, et al. Confirmation No.7809
Application No. : 09/637,764
Filed : August 10, 2000
Title : ROCK BIT WITH HARD-FACING MATERIAL INCORPORATING
SPHERICAL CAST CARBIDE PARTICLES
Grp./Div. : 3672
Examiner : William P. Neuder
Docket No. : 36912/S61

PETITION TO REVIVE UNDER 37 CFR § 1.137(a) AND

PETITION TO WAIVE FEES

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Post Office Box 7068
Pasadena, CA 91109-7068
November 1, 2007

Commissioner:

This is a petition to revive the above-referenced application (hereinafter "the Application"). The Application was deemed abandoned for failure to timely file a proper reply to the Office action letter mailed on March 7, 2006.

Applicant became aware of the abandonment of the application on or about September 27, 2007 when Applicant's Assistant, Sarah C. Carranceja called Examiner Neuder, the Examiner of the above-identified Application regarding the status of the Application and the Examiner informed her that a Notice of Abandonment was being issued. (See Declaration of Sarah Carranceja enclosed herein, paragraph 8 ["Carranceja Decl., Par. 8"]) A Notice of Abandonment

Application No. 09/637,764

was mailed on October 1, 2007 and received in the office of the undersigned attorney on October 3, 2007.

Applicant hereby petitions to revive the above-referenced Application. The abandonment of this Application was unavoidable. A proposed reply to the Office action issued on May 22, 2006 is enclosed.

For the reasons set forth below, the delay in filing a proper reply to the Office action of May 22, 2006 was unavoidable.

In the Office action mailed on May 22, 2006, the Examiner issued a Notice of Non-Compliant Amendment stating that the response to the Final Rejection of March 7, 2006 was not in compliance with 37 CFR §1.121, as a complete listing of all the claims was not present. A response to the Notice of Non-Compliant Amendment was filed by Applicant on June 7, 2006. On November 7, 2006, the Examiner advised Ms. Carranceja that a Notice of Allowability was sent to the Special Program Examiners on September 1, 2006. (See Carranceja Decl., Par. 4)

As a Notice of Allowance had not issued, on September 7, 2006, the statutory bar date for the Final Rejection, the undersigned filed a Notice of Appeal.

Ms. Carranceja made multiple telephone calls to the Examiner who advised her that the Notice of Allowability had already been sent to the Special Program Examiners and the Examiner was awaiting a reply. (See Carranceja Decl.) Based on the Examiner's indications, the undersigned attorney believed that the response to the Notice of Non-Compliant Amendment of May 22, 2006 was proper and entered. Consequently, an appeal brief was not filed.

After continued telephone calls to the Examiner by Ms. Carranceja, the Examiner advised Ms. Carranceja on September 27, 2007 that a Mr. Meyers of the Special Program Examiners Department had advised the Examiner that the Application was not in condition for allowance because a proper response was not filed in response to the Notice of Non-Compliant Amendment which issued on May 22, 2006. Consequently, the Examiner issued the Notice of Abandonment.

Application No. 09/637,764

According to the Examiner, the Notice of Allowance along with the application were with the Special Program Examiners Department since September 2006 with no action taken. It was only after Ms. Carranceja contacted the Examiner, who repeatedly contacted the Special Program Examiners Department, that the Special Program Examiners Department took action. It was after such multiple contacts that the Examiner was advised that the Application would not be allowed.

Throughout the process, the undersigned believed that the Application was being allowed since no word to the contrary was issued by the U.S. Patent and Trademark Office.

Had the Special Program Examiners Department responded in a timely fashion and advised Applicant that the filed response was not proper, the undersigned would have had the opportunity to properly respond to the outstanding Office action. Up to September 27, 2007, based on representations made by the Examiner, the undersigned believed that the response filed to the Notice of Non-Compliant Amendment was proper, as a Notice of Allowance was issued by the Examiner.

Applicant respectfully submits that the above showing demonstrates that the delayed filing of a proper reply to the Office action was unavoidable in accordance with 37 CFR §1.137(a).

The status of the Application was officially made known to Applicant on October 3, 2007 when Applicant received the Notice of Abandonment. Upon learning the status of the Application, Applicant hereby promptly filed this Petition to Revive the Application.

At no time was there any intention on the part of the undersigned or the Applicant to allow the Application to go abandoned. Various attempts, as illustrated herein were made by the undersigned to check on the status of the Application and when contact was made with the U.S. Patent and Trademark Office ("USPTO"), the undersigned was advised that a Notice of Allowance was forwarded to the Special Program Examiners Department.

Application No. 09/637,764

The abandonment of this Application was due to a USPTO error in not advising Applicant in a timely fashion that the response to the Notice of Non-Compliant Amendment was improper. As such, Applicant petitions the Commissioner to waive the fee for this Petition to Revive as the abandonment was due to USPTO error.

It is believed that all pertinent facts related to the delay in reply by Applicant are provided herewith. Based on the foregoing, Applicant respectfully requests that Commissioner grants the Petition to Revive the Application based on unavoidable delay and the Commissioner grants Applicant's Petition to Waive the Fees for the Petition to Revive for unavoidable delay.

The Commissioner is hereby authorized to charge any fees under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account No. 03-1728. Please show our docket number with any charge or credit to our Deposit Account. **A copy of this letter is enclosed.**

Respectfully submitted,

CHRISTIE PARKER & HALE, LLP

By 

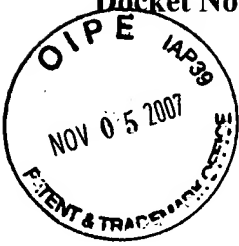
Constantine Marantidis
Reg. No. 39,759
626/795-9900

CM/scc

Enclosures: Response

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Docket No. 36912/CM/S61



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For : Reissue of U.S. Patent No. 5,791,422
Patentee : Dah Ben Liang, et al.
Patent No. : 5,791,422
Patent Issue Date : August 11, 1998
Title : ROCK BIT WITH HARDFACING MATERIAL
INCORPORATING SPHERICAL CAST
CARBIDE PARTICLES

Docket No. : 36912/CM/S61

DECLARATION OF SARAH CARRANCEJA

Assistant Commissioner for Patents
Washington, D.C. 20231

Post Office Box 7068
Pasadena, CA 91109-7068

Commissioner:

I, SARAH CARRANCEJA, declare the following:

1. I am an assistant to Constantine Marantidis. Mr. Marantidis had asked me to follow up with the U.S. Patent and Trademark Office and specifically, Examiner Neuder in relation to the status of the above-referenced application.

2. As part of my job, I keep a log of all telephone calls I make in relation to each application being prosecuted by Mr. Marantidis.

3. A true and accurate copy of the telephone log kept in relation to the above-referenced application which is our docket S61:36912 is enclosed herein in Appendix A.

4. Around the beginning of November 2006, Mr. Marantidis had asked me to contact the Examiner on the above-referenced application regarding the status of the application. As can be seen from the attached log, on November 7, 2006, I contacted Examiner William Neuder at

Docket No. 36912/CM/S61

11:59 a.m., Pacific time. Mr. Neuder advised me that he has reviewed the file and sent a Notice of Allowability to the Special Program Examiners on September 1, 2006.

5. As evidenced from the log, I made multiple calls to Examiner Neuder regarding the status of the application.

6. On a telephone call on February 12, 2007, Examiner Neuder again advised me that the Notice of Allowability was sent to the Special Programs Examiners on September 1, 2006. For convenience, the entries to these calls are highlighted herein.

7. On September 18, 2007 I had a telephonic conference with Examiner Neuder who advised me that Mr. Steven Meyers of the Special Program Examiners Department requested that Mr. Neuder abandon the above-referenced application because the statutory period to respond from the last Office action had already expired. A true and accurate copy of the Memorandum to File which I prepared on September 18, 2007 memorializing my conversation with Examiner Neuder is attached hereto in Appendix B.

8. On September 27, 2007, I had another telephonic conference with Examiner Neuder regarding the status of the above-referenced application. Examiner Neuder advised me that he will be issuing a Notice of Abandonment and that we should respond with a Petition to Revive the Application along with a special note that the petition fee be waived because of PTO error. A true and accurate copy of the Memorandum I prepared on September 27, 2007 memorializing my conversation with Examiner Neuder is also attached hereto in Appendix C.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; further, that these statements were made with the knowledge that willful statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such

Docket No. 36912/CM/S61

willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 11/01/07

By: Sarah Carranceja

Sarah Carranceja

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